

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: July 8, 1988

TO: Councilmember Abbe Wolfsheimer
FROM: City Attorney
SUBJECT: Carmel Mountain Ranch - Master Conceptual
Grading Plan and the Hillside Review Overlay
Zone

Pursuant to your request of June 21, 1988, I have reviewed the chronology of events included in your memorandum. Mr. Robert Spaulding, Planning Director, has noted that the Hillside Review Overlay Zone was not applied to the property. Since the Hillside Review Overlay Zone was not applied to the property at or before the time of approval of the development agreement, the provisions of Section 6.1 of the development agreement, set forth in my memorandum of May 10, 1988, would preclude the subsequent application of the Hillside Review Overlay Zone to the property. It would have been possible to adopt an ordinance applying the Hillside Review Overlay Zone to the property after the City Council amended the zone and adopted the guidelines, but that action was not taken.

For purposes of Section 6.5 of the development agreement, the ordinances in effect at the time of approval of the development agreement are those of general application to all development and those made specifically applicable to the project by the adoption of an ordinance such as a rezoning from A-1-10 to R-1-5 or application of the Hillside Review Overlay Zone to specific property.

A regulation that could have been applied to the property by the adoption of an ordinance prior to the approval of the development agreement cannot subsequently be applied to the property except as provided by Section 6.5.1 of the development agreement cited in my memorandum of May 10, 1988.

JOHN W. WITT, City Attorney
By
Frederick C. Conrad
Chief Deputy City Attorney

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